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7 **UNITED STATES DISTRICT COURT**
8 **WESTERN DISTRICT OF WASHINGTON**
9
10 **AT SEATTLE**

11 **TRINE ERIKSEN,**) Case No.
12)
13 Plaintiff,) **COMPLAINT FOR VIOLATION**
14) **OF FEDERAL FAIR DEBT**
15) **COLLECTION PRACTICES ACT**
16)
17)
18 vs.)
19 **FIRST NATIONAL COLLECTION)**
20 **BUREAU, INC. AND DAVID)**
21 **IMBURGIA,**)
22)
23 Defendants.)
24

25 **NATURE OF ACTION**

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27 1. This is an action brought under the Fair Debt Collection Practices
28 Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.*, and the Telephone Consumer
Protection Act (“TCPA”), 47 U.S.C. § 227.

JURISDICTION AND VENUE

2. This Court has jurisdiction under 15 U.S.C. § 1692k(d), 47 U.S.C. §

COMPLAINT FOR VIOLATIONS OF THE FAIR
DEBT COLLECTION PRACTICES ACT-1

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227(b)(3), 28 U.S.C. § 1331, and 28 U.S.C. § 1367(a).

3. Venue is proper before this Court pursuant to 28 U.S.C. §1391(b), where the acts and transactions giving rise to Plaintiff's action occurred in this State and this district, where Plaintiff resides in this State and this district, and where Defendants transact business in this State and this district.

PARTIES

4. Plaintiff, Trine Eriksen ("Plaintiff"), is a natural person who at all relevant times resided in the State of Washington, County of King, and City of Burien.

5. Plaintiff is a "consumer" as defined by 15 U.S.C. § 1692a(3).

6. Defendant, First National Collection Bureau, Inc. ("FNCB") is an entity who at all relevant times was engaged, by use of the mails and telephone, in the business of attempting to collect a "debt" from Plaintiff, as defined by 15 U.S.C. §1692a(5).

7. Defendant, David Imburgia ("Imburgia") is an individual who at all relevant times was engaged, by use of the mails and telephone, in the business of attempting to collect a "debt" from Plaintiff, as defined by 15 U.S.C. §1692a(5).

8. "Employees can be held personally liable under the FDCPA." *Robinson v. Managed Accounts Receivable Corp.*, 654 F. Supp. 2d 1051, 1059

(C.D. Cal. 2009); see *Schwarm v. Craighead*, 552 F. Supp. 2d 1056, 1070-71 (E.D. Cal. 2008).

9. Furthermore, “most district courts that have addressed the issue have held that the corporate structure does not insulate shareholders, officers, or directors from personal liability under the FDCPA.” *Schwarm v. Craighead*, 552 F. Supp. 2d 1056, 1070-71 (E.D. Cal. 2008); see *Kistner v. Law Offices of Michael P. Margelefsky, L.L.C.*, 518 F.3d 433, 437-38 (6th Cir. 2008); *del Campo v. Kennedy*, 491 F. Supp. 2d 891, 903 (N.D.Cal.2006); *Brumbelow v. Law Offices of Bennett & Deloney, P.C.*, 372 F.Supp.2d 615, 618-21 (D. Utah 2005); *Albanese v. Portnoff Law Assocs., Ltd.*, 301 F. Supp. 2d 389, 400 (E.D. Pa. 2004); *Musso v. Seiders*, 194 F.R.D. 43, 46-47 (D.Conn.1999); *Brink v. First Credit Res.*, 57 F. Supp. 2d 848, 861-62 (D. Ariz. 1999); *Pikes v. Riddle*, 38 F. Supp. 2d 639, 640 (N.D. Ill. 1998); *Ditty v. CheckRite, Ltd.*, 973 F. Supp. 1320, 1337-38 (D. Utah 1997); *Newman v. Checkrite Cal., Inc.*, 912 F. Supp. 1354, 1372 (E.D. Cal.1995); *Teng v. Metro. Retail Recovery Inc.*, 851 F. Supp. 61, 67 (E.D. N.Y. 1994).

10. First National Collection Bureau, Inc. and David Imburgia (“Defendants”) are “debt collectors” as defined by 15 U.S.C. § 1692a(6).

FACTUAL ALLEGATIONS

11. Plaintiff is a natural person obligated, or allegedly obligated, to pay a debt owed or due, or asserted to be owed or due a creditor other than Defendants.

12. Plaintiff's obligation, or alleged obligation, owed or due, or asserted to be owed or due a creditor other than Defendants, arises from a transaction in which the money, property, insurance, or services that are the subject of the transaction were incurred primarily for personal, family, or household purposes.

13. Defendants use instrumentalities of interstate commerce or the mails in a business the principal purpose of which is the collection of any debts, and/or regularly collects or attempts to collect, directly or indirectly, debts owed or due, or asserted to be owed or due another.

14. Within one (1) year preceding the date of this Complaint, Defendants made and/or placed a telephone call to Plaintiff's cellular telephone number, in effort to collect from Plaintiff an obligation, or alleged obligation, owed or due, or asserted to be owed or due a creditor other than Defendants.

15. Within one (1) year preceding the date of this Complaint, Defendants willfully and knowingly utilized an automatic telephone dialing system to make and/or place a telephone call to Plaintiff's cellular telephone number, in effort to collect from Plaintiff an obligation, or alleged obligation, owed or due, or asserted

1 to be owed or due a creditor other than Defendants.

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3 16. In connection with collection of a debt, Defendants used language
4 the natural consequence of which was to abuse Plaintiff, including Defendants'
5 collection agents threatening Plaintiff during a telephone message, "We will get
6 our money either with, or without, your cooperation!" (§ 1692d(2)).
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8 17. Defendant falsely represented the character, amount, or legal status
9 of Plaintiff's debt, including Defendants' collection agents stating to Plaintiff
10 during a telephone message "If you do not contact us within 24 hours, we will
11 contact your Human Resources Dept. to make repayment arrangements," which
12 implies that Defendant has a judgment from a court of law or other legal
13 entitlement to contact Plaintiff's employer when they do not (§ 1692e(2)(A)).
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16 18. Defendant threatened to take an action against Plaintiff that cannot
17 be legally taken or that was not actually intended to be taken, including
18 threatening to contact Plaintiff's employer directly to obtain payment on the
19 alleged debt without the benefit of a court judgment or other entitlement for same
20 under law (§ 1692e(5)).
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23 19. Defendant used false representations and deceptive practices in
24 connection with collection of an alleged debt from Plaintiff, including
25 Defendants' statement to Plaintiff that they were legally entitled to collect on the
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1 account directly from her employer and that Defendants would get its money
2 “without or without [Plaintiff’s] cooperation.” (§ 1692e(10)).
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4 20. Defendants placed non-emergency telephone calls using an
5 automatic telephone dialing system to Plaintiff’s cell phone, without Plaintiffs
6 prior express consent, for which Plaintiff was charged for the call, including
7 contacting Plaintiff through her personal and work cell phones (47 U.S.C. §
8 227(b)(1)(A)(iii)).
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11 21. Defendants’ actions constitute conduct highly offensive to a
12 reasonable person, and as a result of Defendants’ behavior Plaintiff suffered and
13 continues to suffer injury to Plaintiff’s feelings, personal humiliation,
14 embarrassment, mental anguish and/or emotional distress.
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17 **COUNT I - ALL DEFENDANTS**

18 22. Plaintiff repeats and re-alleges each and every allegation contained
19 above.
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21 23. Defendants violated the FDCPA as detailed above.

22 WHEREFORE, Plaintiff prays for relief and judgment, as follows:
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24 a) Adjudging that Defendants violated the FDCPA;

25 b) Awarding Plaintiff statutory damages, pursuant to 15 U.S.C. §1692k,
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27 in the amount of \$1,000.00;

- c) Awarding Plaintiff actual damages, pursuant to 15 U.S.C. §1692k;
- d) Awarding Plaintiff reasonable attorneys' fees and costs incurred in this action;
- e) Awarding Plaintiff any pre-judgment and post-judgment interest as may be allowed under the law;
- f) Awarding such other and further relief as the Court may deem just and proper.

COUNT II – FNCB

24. Plaintiff repeats and re-alleges each and every allegation contained above.

25. Defendants violated 47 U.S.C. § 227(b)(1)(A)(iii) by willfully and knowingly utilizing an automatic telephone dialing system to make and/or place a telephone call to Plaintiff's cellular telephone number.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Adjudging that Defendants violated 47 U.S.C. § 227(b)(1)(A)(iii);
- b) Awarding Plaintiff statutory damages, pursuant to 47 U.S.C. § 227(b)(3)(B), in the amount of \$500.00 per violation;
- c) Awarding Plaintiff statutory damages, pursuant to 47 U.S.C. § 227(b)(3)(C), in the amount of \$1,500.00 per violation;

1 d) Awarding Plaintiff actual damages, pursuant to 47 U.S.C. §
2 227(b)(3)(B);
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4 e) Awarding Plaintiff reasonable attorneys' fees and costs incurred in
5 this action;
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7 f) Awarding Plaintiff any pre-judgment and post-judgment interest as
8 may be allowed under the law.
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10 **TRIAL BY JURY**

11 Plaintiff is entitled to and hereby demands a trial by jury.
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13 Respectfully submitted this 26th day of August, 2010.
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15 s/Jon N. Robbins
16 Jon N. Robbins
17 WEISBERG & MEYERS, LLC
18 Attorney for Plaintiff
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